

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Luis Eduardo Gutierrez-Sheris Examiner: Bartley, Kenneth
Serial No.: 09/829,614 Group Art Unit: 3693
Filed: April 10, 2001 Confirmation No: 7999
For: MONEY-TRANSFER TECHNIQUES

Mail Stop Petition
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

**PETITION TO ACCEPT AN UNINTENTIONALLY DELAYED
BENEFIT CLAIM UNDER 35 U.S.C. 120**

The Applicant hereby petitions the Assistant Commissioner for Patents to accept an unintentionally delayed benefit claim under 35 U.S.C. 120.

The relevant facts are as follows:

- (1) U.S. provisional patent application serial no. 60/174,646 was filed on January 5, 2000 (hereinafter “the provisional application”).
- (2) U.S. Non-provisional patent application serial no. 09/635,330 was filed on August 9, 2000 (hereinafter, “the ‘330 application”). Since the ‘330 application was filed within one year of the filing of the provisional application, the ‘330 application properly claimed the benefit of the provisional application under 35 U.S.C. 119(e).
- (3) The present application (application serial no. 09/829,614) was filed on April 10, 2001 (hereinafter, “the present application”).

(4) The present application, as originally filed, made a claim only to the provisional application under 35 U.S.C. 119(e). A reference to the provisional application was included in the first paragraph of the present application as filed.

(5) Since the present application, filed on April 10, 2001, was filed more than one (1) year after the January 5, 2000 filing date of the provisional application, the present application's claim to the benefit of the provisional application under 35 U.S.C. 119(e) is improper.

(6) The undersigned attorney of record, during a review of the present application, became aware of the impropriety of the claim in the present application sometime around the time-period of September, 2005 through October, 2005.

(7) In an attempt to correct the priority claim so that the provisional application may be properly claimed, the undersigned attorney of record filed a Preliminary Amendment, dated November 3, 2005, that requested that the first paragraph of the present application be amended from "This application claims priority of co-pending U.S. provisional patent application entitled 'MONEY TRANSFER TECHNIQUES', filed January 5, 2000, and assigned serial number 60/174,646, which is incorporated by reference herein." to:

"This application is a continuation-in-part of U.S. patent application serial number 09/635,330, filed August 9, 2000, which claims priority to U.S. provisional application serial no. 60/174,646, filed January 5, 2000, which is incorporated herein by reference."

(8) Accompanying the Preliminary Amendment was a newly executed Declaration for Utility Patent Application that claimed the benefit of both the provisional patent application under 35 U.S.C. 119(e) and the '330 application under 35 U.S.C. 120.

(9) In an Office Action, dated March 16, 2007, in the present application, the Examiner acknowledged that the Preliminary Amendment that was filed, but indicated that it had not been "perfected."

(10) According to the rules, the specific reference to the prior application must be submitted during the pendency of the application and within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior application. Since the present application was filed on April 10, 2001, and the prior '330 application was filed on August 9, 2000, the specific reference must have been submitted in the present application by December 9, 2001. It is noted that the '330 currently is pending.

(11) The Preliminary Amendment, which made the required reference, was submitted on November 3, 2005. The below-named attorney of record hereby submits that the entire delay between December 9, 2001, the date the claim was due, and November 3, 2005, the date the claim was filed, was unintentional. Various details of what transpired during this time period are discussed below.

(12) The present application originally was filed, on April 10, 2001, by Mr. Peter L. Michaelson of the firm Michaelson & Wallace.

(13) New counsel, that is, the undersigned attorney of record, took over representation of the patent matters of the assignee of the present application some time in the March through April, 2003 time period. A Power of Attorney Appointing (New) Counsel was submitted in the present application on April 30, 2003. The U.S. Patent and Trademark Office acknowledged the Power of Attorney on September 18, 2003.

(14) As mentioned above, the undersigned attorney of record reviewed the present application around the time period of September, 2005 through October, 2005, and discovered during this time period that the claim of priority to the provisional application was improper, and shortly thereafter sought to correct the claim of priority by submission of the Preliminary Amendment and newly executed declaration (see paragraphs (6) - (8) above).

(15) The undersigned attorney of record hereby submits that the delay in the correction of the claim of priority so that the claim of priority to the provisional application, via a claim of priority to the '330 application, from the period of time the undersigned attorney of record became responsible for this application to the filing of the Preliminary Amendment was unintentional.

(16) To comply with the requirements for submission of this Petition, the undersigned attorney of record contacted prior counsel, Mr. Peter L. Michaelson, on September 12, 2007, to inquire as to prior counsel's knowledge of the present application while prior counsel was responsible (i.e., attorney of record) for the present application. In response, prior counsel indicated that he had no recollection of the present application whatsoever, including any recollection that any error was made (if indeed one was made, according to prior counsel). Accordingly, any delay in the correction of the claim of the benefit being made in the present application by prior counsel between the time period when such claim must have been filed (i.e., December 9, 2001) and the time period of when prior counsel was relinquished from responsibility of the present application was unintentional, simply since prior counsel was unaware that an error in the benefit claim was made.

The petition fee of \$1,370.00, as set forth in §1.17(t), is being paid via Electronic Funds Transfer. However, if the EFS should fail, the Commissioner is authorized to charge to Deposit Account No. 03-3415 any additional fees incurred or credit any overpayment by reason of this submission.

In view of the foregoing, it is requested that this petition be accepted.

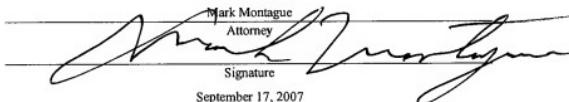
Respectfully submitted,


Mark Montague
Reg. No. 36,612

COWAN, LIEBOWITZ & LATMAN, P.C.
1133 Avenue of the Americas
New York, NY 10036-6799
(212) 790-9200

I certify that this correspondence is being transmitted via the Patent Electronic Filing System (EFS)
to the United States Patent and Trademark Office on September 17, 2007

Date of Deposit


Mark Montague
Attorney

Signature

September 17, 2007
Date of Signature

The Commissioner is hereby authorized to charge any additional fees which may be
required, or credit any overpayment to Account No. 03-3415.